

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TICO SMITH,

Plaintiff,

vs.

**Case No.: 2:13-cv-784
JUDGE SMITH
Magistrate Judge King**

**CORRECTIONAL OFFICER
VAN WINKLE, et al.,**

Defendants.

ORDER

On August 8, 2013, the United States Magistrate Judge issued a *Report and Recommendation* recommending that Plaintiff's claims against Defendants Braden, Evans, and Parrish be dismissed for failure to state a claim upon which relief can be granted. Further, that Plaintiff's claims against Defendant Van Winkle proceed. (*See Report and Recommendation*, Doc. 4). The parties were advised of their right to object to the *Report and Recommendation*. This matter is now before the Court on Plaintiff Tico Smith's Objections to the *Report and Recommendation*. (*See Doc. 8*). The Court will consider the matter *de novo*. *See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3)*.

The objections present the issues presented to and considered by the Magistrate Judge in the *Report and Recommendation*. Plaintiff objects to the Magistrate Judge's finding that his claims against Defendants Braden, Evans and Parrish are based on an alleged interference with Plaintiff's pursuit of internal grievance procedures. Rather, he generally asserts that his claims

address the substantial protections afforded to prisoners pursuant to the Eighth Amendment to the United States Constitution. However, Plaintiff only alleges that Corrections Officer Van Winkle subjected him to excessive force. The allegations against the remaining Defendants pertain to their actions or inactions following Plaintiff's complaint of excessive force by Van Winkle. Plaintiff has not offered any new arguments in support of his claims. For the reasons stated in the *Report and Recommendation*, this Court finds that the objections are without merit.

The *Report and Recommendation*, Document 4, is **ADOPTED** and **AFFIRMED**.

Plaintiff's claims against Defendants Braden, Evans, and Parrish are hereby dismissed for failure to state a claim upon which relief can be granted. Plaintiff's claims against Defendant Van Winkle will proceed.

The Clerk shall remove Document 4 from the Court's pending motions list.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT